IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2002

CORAM:

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

TAX CASE NO.292 of 1994
(Reference No.137 of 1994)

The State of Tamil Nadu
represented by the
Deputy Commissioner of Commercial Taxes
Madras (North)
Division, Greams Road,
Madras-600 006. ... Petitioner

Versus

Tvl.Khivraj Motors Limited
23, Mount Road, Madras-600 006. ... Respondent

Prayer: Revision Petition to revise the Order of the Sales Tax Appellate Tribunal (Main Bench), Madras dated 26.02.1993 and passed in Tribunal Appeal No.962 of 1992.

! For Petitioner : Mr.T.Ayyasamy, Spl.Govt.Pleader (Taxes)

^ For Respondent : Mr.V.Ramachandran

: JUDGMENT

K.RAVIRAJA PANDIAN,J.

The revision is filed against the Order of the Sales Tax Appellate Tribunal made in T.A.No.962 of 1992, whereby a turn over of Rs.27,20,4 91-35ps, which has been brought to tax under Central Sales Tax Act for the assessment year 1970-71 by the Assessing Officer and confirmed by the Appellate Authority has been reversed by the Tribunal.

2. The brief facts, which would help us in resolving the issue, are as follows:

The respondent is a dealer in motor vehicles. For the year 1970-71, they claimed exemption on a turnover of Rs.77,10,048/- as sales made outside

the state, out of which a turn over of Rs.25,466-71ps related to sale of spares and the balance of Rs.76,84,581-59ps relates to sale of cars. The place of business of the assessee was inspected on 28.8.1970 and 27.4.1971 by the officials of the Enforcement Wing, Madras and recovered certain documents. The examination of the accounts and documents disclosed that the exemption claimed by the assessee as sale made at Nellore/Chittoor is not correct and the sales were actually made at Madras. Out of the said turnover of Rs.76,84,581-59 ps, the Assessing Officer considered turnover of Rs.49,64,090-24ps as intra-State turnover and in respect of the balance turnover of Rs.27 ,20,491-35ps, since no material was available, the Assessing Officer presumed that the transaction would have been made to purchasers outside the State and on that basis, the above said turnover of Rs.27,20 ,491-35ps has been brought to tax under the CST. The said order was taken on appeal. It was confirmed by the Appellate Authority. On further appeal, the Appellate Tribunal reversed the finding. The correctness of the said order of the Tribunal is now challenged in the present revision petition.

3. The learned Government Pleader appearing for the petitioner assailed the order of the Appellate Tribunal on the ground that in respect of the earlier year in 1969-70, for the very same assessee, this Court upheld the order of the assessment and as such, this revision has to be allowed restoring the order of the Assessing Officer. He further submitted that the assessment has been made on the basis of the materials recovered at the time of inspection from the place of premises of the dealer. Such an assessment was upset by the Tribunal. Hence, the Order of the Tribunal requires interference from this Court.

4. On the other hand, the learned counsel appearing for the respondent/assessee has submitted that in respect of the TNGST assessment made by the Assessing Officer over a turnover of Rs.49,64,090-24ps on the basis of the very same inspection materials has been reversed by the very same order of the Appellate Tribunal. That Order has been taken on revision by the Department to this Court. After formation of the Special Tribunal under Article 323-B of the Constitution of India, the revision filed by the Department in respect of the TNGST turnover was transferred to the Special Tribunal and the Special Tribunal taking into consideration of the materials available has upheld the order of the Appellate Tribunal in respect of the TNGST turnover. When that being the position, the CST turnover which has been brought to tax only on presumption has been rightly set aside by the Appellate Tribunal and that order requires no interference from this court.

5. The learned counsel further contended that the entire turnover of Rs.77,10,048-30ps, which the respondent claimed as sales outside the State of Tamil Nadu were brought to tax under the Andhra Pradesh General Sales Tax Act (hereinafter referred to as the "APPGST Act") as a sale within the State of Andhra Pradesh and tax due thereon has been paid to the Andhra Pradesh State and that order of the Tax Authority of Andhra Pradesh has been upheld by the High Court and by the Supreme Court in S.L.P. In these factual position, it is proved beyond doubt that the sale in respect of the turnover above said has been done outside the State of Tamil Nadu and as such the order of the Assessing Officer, which is based only on presumption has rightly been

reversed by the Appellate Tribunal, the fact finding authority, which requires no interference.

6. We heard the arguments of the learned counsel on either side and perused the material on record.

7. It is the case of the respondent/assessee that they are authorised distributors of Ambassador cars for Madras and the Districts of Nellore and Chittoor in Andhra Pradesh State under the Motor Cars ( Distribution and Sale) Control Order issued under the Essential Commodities Act and it is the further case of the respondent that they have separate branches in Nellore and Chittoor. Orders were booked at the respective branches and the payments from the customers are received by the respective branches. The various documents maintained at the branches would prove that the cars were delivered after registration either at Nellore or Chittoor, as the case may be. Further, the various vouchers show that the cars were delivered to the customers by the respective branches and therefore the turnover were sales of cars outside the State of Tamil Nadu, not taxable under the State Act or C.S.T. The said case of the respondent was rejected by the Assessing Authority on the ground that the dealers received the cars at Madras undertook the work of registration by obtaining necessary documents from the purchaser. The registration work was prior to delivery of cars and the cars were delivered at Madras to the concerned purchaser. Hence, the movement of cars to Chittoor and Nellore did not arise and the sales amount to local sale within the State of Tamil Nadu.

8. In this revision, we are concerned only with the C.S.T assessment. It is interesting to note that the CST assessment has been framed against the respondent by the Assessing Officer in the following terms:
"It can be safely presumed that in as much as proof of delivery of the

goods at Madras is lacking in respect of a turnover of Rs.27,20,49 1-35, they should have been moved to places outside the state as a result of the sale. The transactions therefore attract liability to tax under the CST Act 1956."

9. This reasoning of the Assessing Officer, which has been confirmed by the Appellate Authority, has been reversed by the Tribunal, the highest fact finding authority by recording reasons as follows:
"Assessment cannot be made on presumption. It must be established that the goods in respect of this turnover moved to places outside the State as a result of the sale. Absolutely there is no proof regarding this. The finding of the Assessing Officer that it can be safely presumed that inasmuch as proof of delivery of the goods at Madras is lacking in respect of the disputed turnover they should have been moved to places outside the State as a result of the sale cannot hold good. If there is lack of proof in one angle, it cannot be shifted to the other angle. The Department must establish that this turnover attracted assessment under CST. It is significant to note that the goods were sold in Andhra Pradesh and sales tax has been paid in Andhra Pradesh. The appellant has also given objections to the notice stating that the appellants were assessed to sales tax by the State of Andhra Pradesh and all the items covered in the pre-assessment notice

proposed to be assessed in the State of Tamil Nadu, have been included in the assessment made in the State of Andhra Pradesh and the Andhra Pradesh authorities had taken the view that the transactions are assessable at Andhra Pradesh State and accordingly they assessed the turnover in the State of Andhra Pradesh and as such there was no intention to evade payment of tax and the entire transactions are recorded in their books of accounts. The appellants have also stated that they have opened separate branches Nellore/Chittoor and orders were booked by the respective branches and the branches were registered under the Andhra Pradesh Sales Tax Act, having registration numbers and independent character and payments were made by the customers in their respective branches and entered in the accounts maintained there and the cars were delivered from Nellore/Chittoor branches to the customers and the turnovers were reported by the branches in the State of Andhra Pradesh. So it is seen from the records that these transactions have been assessed as local sales under the provisions of Andhra Pradesh Sales Tax Act and proper accounts are also maintained by their branch offices Nellore/Chittoor. So it cannot be stated that the turnovers liable for assessment under CST Act. There is lack of proof with regard to delivery of the goods at Madras. There are no documents to establish that the goods in respect of the turnovers moved to places outside the State as a result of sale. Absolutely there is no proof that the turnover is liable for assessment under CST Act. Hence, we find that the assessment made on the disputed turnovers under the CST Act is not sustainable and it is liable to be set aside."
(Italics by us)
10. We also find that there is absolutely no material to prove that the cars are moved in pursuance of a contract of sale at Nellore or Chittoor so as to bring the disputed transaction under inter-State transaction. It is not the case of the petitioner that the documents unearthed during the inspection proved that particular number of cars were booked at Nellore/Chittoor in Andhra Pradesh State and pursuant to that booking, the same number of cars were moved from Madras office of the respondent to the Branch Office at Nellore/Chittoor so as to rope in those transactions within the ambit of Section 3(a) of the C.S.T. Act. The reasoning given by the authorities is that the assesses claimed exemption over a turnover of Rs.77,10,048/- as sales outside the State and out of which a turnover of Rs.25,466-71ps related to sale of spare parts out of the balance turnover of Rs.76,84,581-59 ps, a turnover in Rs.49,64,090-24ps has been proved to be local sales at Madras and remaining turnover of Rs.27,20,491-35ps presumed to be inter-State transaction. We cannot approve this sort of presumption to the turnover under C.S.T. No other materials are made available before us except the orders of the authorities under the Sales Tax Act. In the absence of any other materials made available to us so as to take a different view than the one taken by the Appellate Tribunal, we refrained ourselves from interfering with the order under revision.

11. It is well settled that the onus lies on the Revenue to disprove the contention of the dealer that a sale is outside the State and to show that it is an inter-State sale. This is what the Supreme Court has held in COMMISSIONER OF SALES TAX VS. SURESH CHAND JAIN reported in 70 S.T.C. 45. However, in the present case, except the above presumption as observed by the

Appellate Tribunal, no material worth mentioning has been shown by the Assessing Authority to come to the conclusion that the turnover, which is in dispute in the revision, is an inter-State turnover.

12. The learned counsel appearing for the respondent also produced the assessment order in respect of the assessment year 1970-71 dated 3 1.12.1973 made by the proceedings of the Commercial Tax Officer, Gudur, wherein the entire turnover of Rs.76,23,482-71ps has been assessed to tax under the APGST. This turnover tallies with the turnover of Rs.76,84,581-59 which was brought to tax under the TNGST and CST put together in Tamil Nadu, with a negligible variance. Hence, it is proved that the entire transaction has been accounted for and tax has been paid in the Andhra Pradesh state.

13. In respect of the TNGST assessment, the Special Tribunal has upheld the order of the Appellate Tribunal by recording reasons to the following effect:

"We have examined the rival submissions and perused the records produced before us. We find considerable force in the contention of Mr. V.Ramachandran, counsel for the assessee. One cannot forget the fact during the years 1969-70 and 1970-71 only Ambassador Cars were available and there was always a long queue of purchasers. Naturally people wanted to get priority by booking through lean centres like Nellore and Chithoor. The evidence no doubt discloses that people in Madras and other places gave addresses in Nellore or Chittoor to book cars. It is not disputed that the cars were taken to Nellore and Chithoor to register them in the name of the applicants. It is not disputed that sales tax was paid in Andhra Pradesh State. To complete the formality the assessee took on themselves the formality of registration etc. and then brought back the cars to Madras to physically deliver them to the parties. This is an arrangement between the parties to get over the Control Order. But legally, the cars were sold in Nellore or Chithoor where the registration took the Motor Vehicles Act took place. The persons who booked the cars from those centres became owners. Thereafter it was only an arrangement to bring the cars to Madras and it will not have any relevance to the contract of sale. It will be appropriate at this stage to look at the statement of the Manager, Mr.M.K.Hussain. Says the manager,

"Our day book, ledger and other account books, relating to car sales are being maintain at H.O. Madras. The procedure for car booking is the party has to submit application forms in duplicate together a S.D.book for Rs.2,000/- and this office will forward the documents to Head Office for necessary entries in the record books and the duplicate form will be returned the party with priority number from here.

The vehicles will be delivered according to priority numbers from this office. The value of the vehicle can be paid by cheques Draft or cash for which receipt will be given to the party by Head Office or Branch. They maintain separate accounts for this office at Nellore."

Therefore, much significance cannot be attached to the scant records and small offices maintained at Nellore and Chittor. The elaborate reasons given by the assessing authority for the 220 cases in 1970-71 and 64 cases in 1969-70 fit in with the above explanation of the manager and the legal interpretation given by us to the Control Order and the modus operandi used by

both parties.
In fine, we uphold the order of the Sales Tax Appellate Tribunal that the subject sales are not exigible to tax under TNGST Act 1959. The revisions filed by the Government are dismissed."
(Italics by us)
This finding of fact arrived at by the Appellate Tribunal has been confirmed by the Special Tribunal in respect of TNGST Act has statutorily become final.

14. The learned Government Pleader submitted that the Appellate Tribunal though stated in an elaborate fashion, that as seen from the records that these transactions have been assessed to local Sales Tax at Andhra Pradesh State and proper accounts are also maintained by the branch offices in Nellore and Chittoor is not correct and no such materials were produced before the Tribunal.

15. We are afraid, we cannot approve of this argument of the Government Pleader on the simple ground that the argument contrary to the statement in the judgment cannot be taken note of unless the contrary is proved, that too at the revisional stage. Useful reference may be had to the decision of the Supreme Court TAMIL NADU ELECTRICITY BOARD VS. SUMATHI reported in 2000(4) S.C.C. 534. The Appellate Tribunal specifically stated that it is seen from the records that these transactions have been assessed to local tax under the provisions of the Andhra Pradesh General Sales Tax Act and proper accounts are also maintained by their branch offices at Nellore and Chittoor. The argument advanced by the Government Pleader cannot be accepted at the revisional stage when the final fact finding authority has come to the conclusion on facts that the accounts were maintained by the Branch Offices at Nellore and Chittoor and the transaction was assessed to tax under APGST Act. As stated already, the learned counsel also produced the assessment made for the relevant assessment year under the A.P.G.S.T. Act. Incidentally, the Special Tribunal has also in respect of the TNGST turnover, after perusing the record produced before the Tribunal, upheld the order of the Appellate Tribunal as extracted supra. Hence, the finding of fact reached by the fact finding authorities cannot be interfered with at the revisional stage, particularly when there is no materials contra available to disagree with the same.

16. The other contention of the learned Government Pleader that in respect of the earlier assessment order, this court has upheld the assessment made by the Assessing Authority in the case of KHIVRAJ MOTORS (P) LTS. VS. STATE OF TAMIL NADU reported in 106 S.T.C. 400 by itself cannot be a reason to allow this revision. In that case, the three authorities including the Sales Tax Appellate Tribunal, the highest fact finding authority, have found against the assessee/dealer and the revision filed by the assessee has been rejected by this Court. One of the reasons given by this court is as follows:
"Regarding the contention that, on the footing that those sales were inside sales in Andhra Pradesh, they were actually assessed to tax by the Andhra Pradesh authorities and the assessment had even become final since the matter had been concluded even by the Andhra Pradesh High Court in revision,

we must state that even though the copies of the orders of the Andhra Pradesh Sales Tax Appellate Tribunal and the High Court of Andhra Pradesh produced before us show that the sales involved therein were held to be sales within Andhra Pradesh the said orders relate not simply to the present assessment year 1969-70, but relates to four assessment years, viz., 1969-70, 1970-71, 1971-72 and 1972-73 and, in regard to assessment year 1969-70, the turnover involved before the Andhra Pradesh Sales Tax Appellate Tribunal was Rs.16 ,96,044.61. In the above circumstances, we cannot assume that the above referred to turnover of Rs.16,96,044.61 has any correlation with the turnover in question in the present case in relation to the said assessment year 1969-70 only, viz., the above said turnover of Rs.4,3 9,686. For this reason itself, we cannot place reliance on the abovesaid orders of Andhra Pradesh Tribunal and the Andhra Pradesh High Court."

The facts of the present case are not as stated above. The exemption claimed on the turnover of Rs.77,10,048-30ps as outside sale has been roped in by the Assessing Officer under TNGST and CST. The turnover thus roped in for taxation is correlatable to the turnover reported in the books of account of the assessee and offered to tax under APGST Act. This is the precise reason given by the Appellate Tribunal, the highest fact finding authority in their order that "it is seen from the records that the transactions have been assessed as local tax under the provisions of APGST and proper accounts were also maintained by the Branch Office in Chittoor." Hence, the reliance on the judgment of KHIVRAJ MOTORS (P) LTS. VS. STATE OF TAMIL NADU reported in 106 S.T.C. 400 cannot be had to this case on the factual situation of the present case. This additional fact makes an ocean of difference in the conclusions reached in the reported case. Each assessment year is a unit by itself. It cannot be said that the transaction of dealer for different assessment years would be identical or same. The pattern of sale may vary depending upon the demand of the goods in a given year. Useful reference can be had to the decision of the Supreme Court in HARYANA FINANCIAL CORPORATION AND ANOTHER VS. M/S. JAGDAMBA OIL MILLS AND ANOTHER reported in 2002(1) JUDGMENT TODAY S.C.482, in which the Supreme Court held as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as sta tutes."

The Court further held as follows:

"The following words of Lord Denning in the matter of applying precedents have become locus classicks:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all

decisive."
xxx xxx xxx
"Precedent should be followed only so far as it makes the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

17. In view of the discussion as stated above, we are declined to interfere with the finding of fact at the revisional stage.
Hence, the revision is dismissed. However, there is no order as to costs.
(V.S.S.,J.) (K.R.P.,J.)
06.03.2002

Index:Yes
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To:
1. The Chairman,
Sales Tax Appellate Tribunal
(Main Bench)
Madras,

2. The Deputy Commissioner (C T)
Madras (North Division)
CT Admn. Building
III Floor, Madras-6.

3. The Assistant Commissioner (C T)
Central Assessment Circle-III
Madras.

06.03.2002

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